

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

CARL HARRISON,

Movant

v.

CIVIL ACTION NO. 2:05-0045
(Criminal No. 2:97-0143-04)

UNITED STATES OF AMERICA,

Respondent

MEMORANDUM OPINION AND ORDER

Pending is movant's second motion pursuant to 28 U.S.C. § 2255, filed January 10, 2005.

Movant seeks the vacatur, set aside, or correction of his March 18, 1998, sentence of 170 months imposed following his guilty plea to distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1), and aiding and abetting money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2. Movant's direct appeal was unsuccessful.

The court received the proposed findings and recommendation of the United States Magistrate Judge filed on

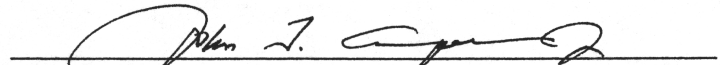
September 8, 2005, pursuant to the provisions of 28 U.S.C. § 636(b) (1) (B). On September 13, 2005, movant objected.

The objections hinge upon the applicability to this proceeding of both Blakely v. Washington, 542 U.S. 296 (2000) and United States v. Booker, 125 S.Ct. 738 (2005). Our court of appeals, however, has now foreclosed a Blakely/Booker argument here. Neither of these decisions is available for post-conviction relief sought by federal prisoners whose convictions became final before the decisions in those two cases. United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005). Further, as noted by the magistrate judge, a second or successive motion, as this one is, requires certification by the United States Court of Appeals for the Fourth Circuit.

Based upon the foregoing and the proposed findings and recommendation of the magistrate judge, which are hereby adopted and incorporated herein, the court concludes that the section 2255 motion should be denied. It is, accordingly, ORDERED that the movant's second motion pursuant to 28 U.S.C. § 2255 be, and it hereby is, denied. It is further ORDERED that this action be, and it hereby is, dismissed and stricken from the docket.

The Clerk is directed to forward copies of this written opinion and order to the movant, all counsel of record, and the United States Magistrate Judge.

ENTER: May 30, 2006

A handwritten signature in black ink, appearing to read "John T. Copenhaver, Jr.", is written over a horizontal line.

John T. Copenhaver, Jr.
United States District Judge